

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PAULINE MONTGOMERY,

Plaintiff,

v.

CDCR CORRECTIONS OFFICER, *et al.*,

Defendants.

Case No. 1:23-cv-00439-NODJ-BAM (PC)

ORDER VACATING FINDINGS AND
RECOMMENDATIONS
(ECF No. 16)

ORDER GRANTING FINAL EXTENSION
OF TIME TO FILE SIGNED COMPLAINT
AND APPLICATION TO PROCEED *IN
FORMA PAUPERIS* (OR PAY FILING FEE)

THIRTY (30) DAY DEADLINE

Plaintiff Pauline Montgomery (“Plaintiff”) is a state prisoner and former county jail inmate proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

On March 24, 2023, the Court ordered Plaintiff to file an application to proceed *in forma pauperis*, completed and signed, including a certified copy of her trust account statement for the past six months, or in the alternative, to pay the filing fee for this action. (ECF No. 3.) Plaintiff was also directed to file a signed complaint, not to exceed 25 pages in length, or a notice of voluntary dismissal. (*Id.*) Following the filing of Plaintiff’s April 24, 2023 notice of change of address, (ECF No. 6), and May 8, 2023 motion for extension of time, (ECF No. 7), the Court extended the deadline to June 12, 2023.

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1 Although Plaintiff filed another notice of change of address on June 9, 2023, (ECF No. 9),
2 she did not file a signed complaint or an application to proceed *in forma pauperis*, or pay the
3 filing fee for this action. Accordingly, on June 28, 2023, the undersigned issued findings and
4 recommendations to dismiss this action, without prejudice, for failure to obey court orders and
5 failure to prosecute. (ECF No. 10.) Plaintiff filed objections on July 20, 2023, explaining her
6 efforts to file the appropriate forms and requesting permission to file another complaint. (ECF
7 No. 12.) The Court vacated the June 28, 2023 findings and recommendations and granted
8 Plaintiff's request for another opportunity to file a signed complaint and an application to proceed
9 *in forma pauperis*. (ECF No. 14.)

10 Plaintiff filed another change of address on August 9, 2023, (ECF No. 15), and the
11 deadline for Plaintiff to comply with the Court's order was extended accordingly. However,
12 Plaintiff again failed to file a signed complaint or application to proceed *in forma pauperis*, and
13 on September 25, 2023, the Court again issued findings and recommendations to dismiss this
14 action, without prejudice, for failure to obey court orders and failure to prosecute. (ECF No. 16.)
15 Plaintiff did not file a response.

16 Currently before the Court is a notice from Plaintiff, originally filed January 11, 2024 in
17 *Montgomery v. CDCR Corrections Officer*, Case No. 1:23-cv-01044-NODJ-GSA ("Montgomery
18 II"), and filed February 6, 2024 in this action based on the Court's order in *Montgomery II*. (ECF
19 No. 18.) It appears that while attempting to file a signed complaint in this action, Plaintiff
20 mistakenly opened a new, duplicate case that has been proceeding as *Montgomery II*, Case No.
21 1:23-cv-1044-NODJ-GSA. The Court in *Montgomery II* has now issued findings and
22 recommendations that *Montgomery II* be dismissed as duplicative of this case. *Montgomery II*,
23 Dkt. 15.

24 Accordingly, the Court finds it appropriate to vacate the pending findings and
25 recommendations in this action to allow Plaintiff a final opportunity to file a signed complaint
26 and application to proceed *in forma pauperis* (or pay the filing fee) in this action. Plaintiff
27 should make sure that her filings contain the correct case number for this action: Case No.
28 1:23-cv-00439-NODJ-BAM.

1 Accordingly, IT IS HEREBY ORDERED that:

- 2 1. The findings and recommendations issued on September 25, 2023, (ECF No. 16), are
3 VACATED;
- 4 2. The Clerk of the Court is directed to serve this order, a blank *in forma pauperis*
5 application for a prisoner, and a civil rights complaint form on Plaintiff;
- 6 3. Within **thirty (30) days** from the date of service of this order, Plaintiff SHALL file:
7 a. The attached application to proceed *in forma pauperis*, completed and signed,
8 including a certified copy of her trust account statement for the past six months, or
9 in the alternative, pay the \$405.00 filing fee for this action; **and**
10 b. A signed complaint, **not to exceed 25 pages in length**, or a notice of voluntary
11 dismissal; and
- 12 4. **Plaintiff is warned that the failure to comply with this order will result in dismissal**
13 **of this action, without prejudice.**

14 IT IS SO ORDERED.

15 Dated: February 8, 2024

16 /s/ Barbara A. McAuliffe
17 UNITED STATES MAGISTRATE JUDGE

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